

))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4189, 4190 and 4191 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

AND

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SPL. LAND ACQUISITION OFFICER & DY COLLECTOR

Versus

VIBHATBHAI POCHABHAI BHARWAD

Appearance:

1. First Appeal No. 4189 & 4190 of 1999
Mr S S Patel, AGP for Petitioners
MR GHANSHYAM AMIN for Respondent No. 1, 2, 3, 4

2. First Appeal No 4191 of 1999

Mr P G Desai, GP for Petitioners
MR GHANSHYAM AMIN for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE D.P.BUCH

Date of decision: 04/02/2000

ORAL (COMMON) JUDGEMENT (Per. Kadri, J.)

The appellants, by filing these First Appeals under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') read with Section 96 of the Code of Civil Procedure, 1908, have challenged the common judgment and award dated August 24, 1998 passed by the learned Extra Asstt. Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Cases No.750, 751 and 752 of 1991.

2. As common questions of facts and law are involved in these three appeals, we propose to dispose of them by this common judgment.

3. The agricultural lands of the respondents-original claimants situated at village Sarala came to be acquired for public purpose of Narmada Main Canal by notification under Section 4(1) of the Act which came to be published in the Government Gazette on April 21, 1987. After following the usual procedure under the Act and after serving notices to the respondents under Section 9(3)(4) of the Act, the Land Acquisition Officer, on the basis of material placed before him, made his award on July 12, 1989 by offering price for the acquired land of village Sarala at Rs.4000/- per Hectare. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate and, therefore, they filed written applications under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court for the determination of market value of the acquired lands. The Land Acquisition Officer referred the applications filed by the respondents to the District Court, Ahmedabad (Rural) which came to be numbered as Land Reference Cases No. 750, 751 and 752 of 1991. Before the Reference Court, the respondents claimed compensation of the acquired lands at Rs.20/- per sq.metre. The claimants to substantiate their claims of Rs.20/- per sq. metre examined one Samantbhai Pochabhai at Exh.16 and Ukabhai Amarbhai at Exh.39, who were the claimants of LAR Nos. 750 and 752 of 1991 respectively. The claimants deposed that the acquired lands were having irrigation facilities and they were raising crops of

paddy, wheat, millet etc. and were getting net income of Rs. 4000/to Rs.5000/- per Vigha. However, the claimants failed to produce any documentary evidence in support of the income derived from agricultural produces. The claimants deposed that the acquired lands situated at Village Sarala were in a developed village. During their deposition, they produced previous award of the acquired lands of Villages Bagodara, Exh.22, Lagadana, Exh.20, Dahegamada, Exh.21 and village Devdholera, Exh.40. Previous awards produced by the claimants indicate that for the acquired lands of village Bagodara, the Reference Court had determined the market price at Rs.10/- per sq. metre for the acquisition of the year 1981. Lands of village Devdholera which were acquired in August 1986 and, the Reference Court had determined the market price at Rs.10/- per sq.metre. Previous awards of village Dahegamada indicate that the acquired lands of the said village in the year 1987, the compensation was determined at Rs.10/- per sq.metre.

4. The Reference Court on overall appreciation of oral as well as documentary evidence concluded that the previous awards of villages Bagodara, Devdholera and Dahegamada are relevant and comparable for the determination of the market value of the present acquired lands of village Sarala. The Reference Court further concluded that all the above villages were situated within a distance of 3 to 4 Kms. The Reference Court therefore deduced that looking to the fertility and situation of the acquired lands of village Sarala and the fact that the lands were at a distance of 4 Kms. from Ahmedabad Rajkot National Highway, it would be just and adequate to determine the market value of the acquired lands at the rate of Rs.10/- per sq. metre. The Reference Court also awarded statutory benefits under 23 (1-A) and 23(2) and interest under Section 28 of the Act. The said common judgment and award of the Reference Court is challenged by the appellants by way of filing these appeals.

5. Learned Government Pleader Mr P G Desai, assisted by learned AGP Mr S S Patel have taken us through the entire record and proceedings of the case and have submitted that the Reference Court erred in placing reliance on the previous awards of surrounding villages which were not at all comparable with the present acquired lands. It is further submitted that the respondents-claimants had not produced cogent and reliable evidence in support of their claim of enhanced compensation and, therefore, the references should have been dismissed. Learned Counsel for the Government

vehemently argued that the acquired lands of village Sarala were situated in remote place and at a distance of 4 Kms. from the national Highway as compared to the lands of village Bagodara and, therefore, the market value determined by the Reference Court was excessive and hence, these appeals deserve to be allowed.

6. Learned Counsel for the respondents Mr G H Amin has vehemently submitted that the previous awards of villages Bagodara, Devdholera and Dahegamada were comparable and relevant for the determination of the market value of the present acquired lands. It is submitted that the acquired lands of previous awards were in all respects comparable with the present acquired lands and, therefore, the Reference Court had not committed any error in placing reliance on previous awards of village Bagodara, Devdholera and Dahegamada which had become final. Ld. Counsel therefore, submitted that the compensation awarded by the Reference Court was just and reasonable and, therefore, the appeals deserve to be dismissed.

7. The Map produced by the learned Government Pleader shows that village Bagodara was situated on the Ahmedabad-Rajkot National Highway whereas village Sarala was at a distance of 4 Kms. from the National Highway. The lands of village Bagodara were acquired in the year 1981 wherein compensation of the said lands was determined at Rs.10/- per sq.metre. Present lands came to be acquired by Notification issued under Section 4(1) of the Act on 5.8.86 and, therefore, there was a gap of six years between the two notifications. Even if rise in price is given at Rs.5% every year, the price of the acquired lands in the year 1986 would come to nearly Rs.13.00 paise. But, as observed earlier, the present acquired lands were at a distance of 4 Kms. from the National Highway some deduction will have to be given to the amount of Rs.13.00. Bearing in mind the situation and fertility of the present acquired lands, in our opinion, it would be just, adequate and reasonable to determine the market value of the present acquired lands at Rs.9/per sq. metre. It is not pointed out by the learned Government Pleader that the previous award of the village Bagodara was challenged in higher forum and, therefore, it can be safely held that the award Ex.22 of village Bagodara had become final. The previous awards of villages Devdholera, Dahegamada and Lagadana indicate that market price of the acquired lands of those villages in or around in the year 1986 and in the year 1987 was around Rs.10/- per sq. metre. It is not brought to the notice

of this Court that the said previous awards of the above villages were challenged in higher forum.

8. Considering the above facts and circumstances as emerging from the record of the case, we determine the market price of the acquired lands of village Sarala at Rs.9/- per sq. metre.

9. It is the settled legal principle that in absence of any other reliable evidence the previous awards of similarly situated lands having same fertility and situation can be relied on for the determination of market value of the adjoining acquired lands. The claimants' evidence, in our opinion, shows that the lands of previous awards namely, Bagodara, Devdholera and Dahegamada were adjoining to the acquired lands of village Sarala wherein the market price of the acquired lands of those villages was determined at Rs.10/- sq. metre for the acquisition which had taken place in the year 1981, 1986 and 1987. However, it may be mentioned that the village Sarala wherein the present acquired lands is situated is at a distance of 5 KMs. from village Bagodara. Village Bagodara is situated on the main Highway whereas village Sarala is interior to the main Highway. The map which is produced by the learned counsel for the appellant on the record of this case shows that village Sarala was interior to the National Highway and, therefore, some deductions will have to be made looking to the situation and development of the present acquired lands. In our opinion, if the market value of the acquired lands of village Sarala is determined at Rs.9/per sq. metre, it would be just and reasonable.

10. As a result of the foregoing discussion, we are of the opinion that the Appeals deserve to be partly allowed. The market price of the acquired lands of village Sarala belonging to the respondent-claimants is determined as on April 21, 1987 at Rs.9/- per sq. metre. The award of the Reference Court be modified accordingly. The claimants would be entitled to statutory benefits under 23 1-A and 23-2 and interest under Section 28 of the Act as extended by the Reference Court. The award be modified accordingly.

Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

...
msp.